

Exhibit 4

SCOTT WITT

January 30, 2020

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION

4 -----
5 ROY C. SPEGELE, individually and
on behalf of all others similarly situated,

6 Plaintiff,

7 vs. Case No. 5:17-CV-967-OLG

8 USAA LIFE INSURANCE COMPANY,

9 Defendant.

10 -----

11

12

13 Videotaped Deposition of SCOTT WITT

14 Thursday, January 30th, 2020

15 9:08 a.m.

16 at

17 GASS WEBER MULLINS LLC
18 241 North Broadway
19 Milwaukee, Wisconsin

20 Reported by Tammy R. O'Neal, RPR

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1 A Okay.

2 Q Does that sound reasonable?

3 A It does. I don't know -- I mean the death benefit
4 option may or may not be -- may or may not be
5 relevant to the exercise we're doing here but ...

6 Q Okay. But you would acknowledge that in any event
7 there were hundreds of pricing cells at issue in the
8 UL3 policy?

9 MR. LYTLE: Object to the form.

10 THE WITNESS: I think some of this is just
11 semantics. I acknowledge that there are that many
12 combinations possible. I don't know whether USAA --
13 what they did with that, if they priced it at every
14 single -- you know, with what granularity they
15 priced.

16 BY MR. MATTSON:

17 Q Okay. Would you agree that for the UL4 there are
18 more pricing cells than there were for the UL3?

19 A Yes.

20 Q And if I suggested to you that for pricing cells for
21 the UL4 there was a grand total of 1,360. Does that
22 strike you as the right order of magnitude?

23 MR. LYTLE: Object to the form.

24 THE WITNESS: It does. It might -- it
25 might be off by a factor of two if we don't -- if we

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1 don't view the two different death benefit options as
2 different pricing exercises.

3 BY MR. MATTSON:

4 Q Okay. Let's take a look at paragraph 72 of
5 Exhibit 1. Strike that.

6 Take a look at page 43 of Exhibit 1.

7 A Okay.

8 Q Now, Mr. Spegele had a UL3 policy; is that right?

9 A Yes.

10 Q And what is the chart depicting at the top of page 43
11 of Exhibit 1?

12 A The chart shows a year-by-year comparison of the
13 expected mortality as defined by the USAA documents
14 as compared with the COI rates that were actually
15 levied. And then the final column is an overcharge
16 percentage which measures what percentage of the COI
17 rate was in excess of the prior column, the expected
18 mortality.

19 Q How many pricing cells are reflected in this chart?

20 A One.

21 Q And then if you look at the chart on page 33.

22 A Yes.

23 Q What is this chart depicting?

24 A This is a year-by-year depiction of expected
25 mortality for a person in Mr. Spegele's

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1 BY MR. MATTSON:

2 Q Throughout the life of the policy?

3 A Yes. I only took one to -- right, if you could -- as
4 soon as I saw an instance where the COI was higher
5 than the expected mortality, that said to me that
6 under Plaintiff's theory, there would be damages.7 Q And that's a distinct exercise, isn't it, from
8 looking to see if overall, if you just kind of net
9 out any situations where the COI rate is over or
10 under expected mortality as you're using those terms,
11 yields a net positive or a net negative?

12 A Yeah, it's a different exercise.

13 Q Okay. Did you perform the exercise that I just tried
14 to describe, trying to figure out whether on a net
15 basis somebody was better off or worse off with the
16 COI scales that Plaintiffs are proposing here?

17 MR. LYTLE: Object to the form.

18 THE WITNESS: I know with -- I know with
19 certainty that Plaintiffs would be better off with
20 the proposed scale because my understanding of
21 Plaintiff's theory is that the goal is to strip out
22 the excess. So the COI rates will be capped at the
23 COI rate, the --

24 BY MR. MATTSON:

25 Q At the mortality rate?

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1 A No, the rate that would be used in my calculation is
2 really the lesser of the expected mortality rate or
3 the actually charged COI rate, because my
4 understanding of Plaintiff's theory is that the
5 breach was any charge that was in excess of expected
6 mortality. There's no contractual -- my
7 understanding, there's no contractual prohibition of
8 the company charging less than expected mortality.

9 So my exercise is to -- the exercise that I
10 went through, what I believed my charge to be, was
11 that I was to remove the excess from the COI to the
12 extent that that excess was a non-mortality
13 component.

14 Q Are you familiar with the phrase, Heads, I win;
15 tails, you lose?

16 A I am.

17 Q Isn't that kind of what Plaintiff is proposing here?

18 MR. LYTLE: Object to the form.

19 THE WITNESS: I don't think so. Again,
20 Plaintiff's theory as I understand it is that the
21 alleged wrongdoing comes anytime that a charge is
22 levied that is greater than the expected mortality.
23 So it's not a straight substitution as much as it is
24 an elimination of the excess of that COI charge.

25 BY MR. MATTSON:

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1 Q Well, let me ask this. If hypothetically, USAA Life
2 had from day one of these policies used the cost of
3 insurance rates that Plaintiff says should have been
4 used, if that had happened and we were trying to put
5 Plaintiffs in the situation where that is what had
6 happened, you would in fact net out situations where
7 the COI rate that was actually charged was lower than
8 expected mortality?

9 MR. LYTLE: Object to the form.

10 THE WITNESS: I'm not an attorney. I can
11 just tell you my understanding of what I was asked to
12 do. And my understanding is it is not a straight
13 substitution. My understanding is that Plaintiff's
14 position is that USAA is free to charge less than the
15 expected mortality if they wish, but they are
16 contractually prohibited from charging more. What
17 I'm quantifying are the instances where they charged
18 more.

19 BY MR. MATTSON:

20 Q And let me be clear. I'm not asking you to offer
21 opinions on legal issues. That is the job of the
22 lawyers, and I'm sure we'll be debating this and
23 other issues in the months to come. What I'm asking
24 you is more of a mathematical question. And that
25 question is let's assume that from day one of UL3 and

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1 the model easily incorporates that. It's just the
2 removal of a few lines of logic within the
3 spreadsheet.

4 Q Have you calculated class-wide damages for this case?

5 A No.

6 Q For how many class members or -- strike that.

7 For how many people have you calculated a
8 damages figure?

9 A Only one to my recollection.

10 Q Mr. Spegele?

11 A Yes.

12 Q Can you mark this as Exhibit 2.

13 (Exhibit 2 marked for identification.)

14 BY MR. MATTSON:

15 Q You've been handed Exhibit 2, Mr. Witt, which is a
16 printout from I think it's called Exhibit A to your
17 report which is the spreadsheet with a number of
18 tabs. This is a printout of one of those tabs called
19 Spegele Damages. You've seen this document before I
20 gather?

21 A Yes.

22 Q You created this document?

23 A Yes.

24 Q By the way, did you have anybody assist you with the
25 creation of your report for this case?

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1 benefit of policy owners when its expectations as to
2 future mortality experience improved.

3 A Correct.

4 Q So I'd like to understand -- well, first, nothing on
5 Exhibit 2 or anywhere in your report tells me a
6 dollar amount that Mr. Spegele incurred on account of
7 count three damages, correct?

8 A That's correct. You could approximate it by taking
9 the percentage I calculated and multiplying it by the
10 annual COI charge that's here in that 28th policy
11 year.

12 Q So I think I heard you say before, but please correct
13 me if I'm wrong, that count three damages as you
14 understand it would be damages over and above count
15 one damages?

16 A Correct.

17 Q How so?

18 A As I've outlined in Exhibit 1, the overcharge
19 percentage that is calculated for count three is done
20 in such a manner that it only -- it carves out the
21 improvement that occurred from the most recent
22 pricing mortality that I did include in count one.

23 So it really is just isolating the
24 improvement between the end of count one and going
25 forward.

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1 A Okay. I'm sorry, could you restate it then?

2 Q Yeah, so -- just sticking with count three, would the
3 approach you're describing change any of the what is
4 now count one analysis pre 2005?

5 A I thought I just answered that, and you said not to
6 answer count one.

7 Q Let me try it again. So as I understand it, the
8 difference between -- the reason count three would
9 result in damages on top of the count one damages is
10 that instead of just limiting yourself to looking at
11 what you understand USAA Life's cost -- mortality
12 expectations to be at repricing, you're looking at
13 interim periods when there's some evidence of their
14 mortality expectations having changed in some way,
15 shape, or form.

16 Am I more or less right about that?

17 A Changes that occurred after the 2005 repricing.

18 Q Right. And that's what I'm saying is if you're
19 looking at count three damages, would there be any
20 count three damages under the approach you're
21 describing for pre 2005 -- the pre 2005 time frame?

22 MR. LYTLE: Object to the form.

23 THE WITNESS: Well, subject to the caveat
24 that I haven't actually done this calculation for
25 Mr. Spegele let alone the entire class, I can't think

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1 of any reason why there would be any count three
2 damages prior to 2005. That would all be
3 encapsulated in the count one damages.

4 BY MR. MATTSON:

5 Q Okay. And then what you do is look at from 2005 on
6 what evidence there is at USAA Life about changes in
7 mortality expectations?

8 A Yes.

9 Q Can we look anywhere in Exhibit 1, including its
10 exhibits, and find which documents, which USAA Life
11 documents you would be relying on to perform that
12 calculation?

13 MR. LYTLE: Object to the form.

14 THE WITNESS: I believe they're listed in
15 there. I would be hard pressed to point to them on
16 the fly. I mean I can -- I can get there by
17 following the trail in my report. But I can't off
18 the top of my head tell you which exhibit or what
19 Bates number they are.

20 BY MR. MATTSON:

21 Q In other words there's nothing in Exhibit 1 that says
22 separately, here are the documents I would look at
23 for count three in performing the calculations that
24 you've just been describing these last several
25 minutes?

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1 STATE OF WISCONSIN)
2) SS:
3 MILWAUKEE COUNTY)

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4 I, Tammy R. O'Neal, RPR and Notary
5 Public in and for the State of Wisconsin, do hereby
6 certify that the preceding deposition was recorded by
7 me and reduced to writing under my personal
8 direction.

9 I further certify that said deposition was
10 taken at Gass Weber Mullins LLC, 241 North Broadway,
11 Milwaukee, Wisconsin, on the 30th day of January,
12 2020, commencing at 9:08 a.m. and concluding at 1:56
13 p.m.

14 I further certify that I am not a relative
15 or employee or attorney or counsel of any of the
16 parties, or a relative or employee of such attorney
17 or counsel, or financially interested directly or
18 indirectly in this action.

19 In witness whereof, I have hereunto set my
20 hand and affixed my seal of office on this 3rd day of
21 February, 2020.

22
23
24

TAMMY R. O'NEAL, RPR
Notary Public

25 My commission expires 8/2/23.